

Members:

Sen. David Ford, Chair
Sen. Connie Lawson
Sen. David Long
Sen. Rose Antich
Sen. Anita Bowser
Sen. Samuel Smith, Jr.
Rep. Vernon Smith, V. Chair
Rep. John Day
Rep. Mae Dickinson
Rep. Mary Kay Budak
Rep. Dennis Kruse
Rep. Candy Marendt



INTERIM STUDY COMMITTEE ON FAMILY LAW ISSUES

**Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554**

LSA Staff:

Christi Megna, Attorney for the Committee
Susan Preble, Fiscal Analyst for the Committee

Authority: Legislative Council Resolution 2-1998

MEETING MINUTES

Meeting Date: October 14, 1998
Meeting Time: 10:15 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 156-A
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. David Ford, Chairperson; Sen. Connie Lawson;
Sen. Rose Antich; Sen. Anita Bowser; Rep. Mae Dickinson;
Rep. Vernon Smith; Rep. Mary Kay Budak; Rep. Dennis
Kruse; Rep. Candy Marendt.

Members Absent: Sen. David Long; Sen. Samuel Smith, Jr.; Rep. John Day.

I. Call to Order

Chair Ford called the meeting to order at 10:15 a.m. The Committee approved the minutes from the previous meeting.

II. Preliminary Drafts (PDs): Discussion and Voting

A. PD 3199¹. Therapeutic and special needs foster care. Provides that a therapeutic foster family home is a foster family home: (1) that provides care to a seriously emotionally disturbed or developmentally disabled child; (2) in which a child

¹ This document is on file in the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

receives treatment in a family home that is supervised by certain qualified program staff; and (3) that meets all of the requirements for licensing of a foster family home and certain supplementary requirements, including additional training for therapeutic foster parents. Prohibits a therapeutic foster parent from providing care to more than two foster children, not including children for whom the therapeutic foster parent is a parent, stepparent, guardian, custodian, or other relative. Allows the Division of Family and Children to permit a therapeutic foster family home to provide care for more than two foster children whenever the placement of siblings in the same therapeutic foster family home is desirable or in the best interests of the foster children residing in the home. Provides that a special needs foster family home is a foster family home that provides care for a child who has a mental, physical, or emotional handicap and who will require additional supervision or assistance in behavior management, activities of daily living, or management of medical problems. Prohibits a special needs foster parent from providing care to more than eight children (including the foster family's children), and requires that not more than four of the children may be less than six years of age. Provides that the Division of Family and Children may grant an exception to the maximum number of children who may be cared for in a special needs foster home whenever the Division of Family and Children determines that the placement of siblings in the same special needs foster home is desirable. Requires the Division of Family and Children to consider the specific needs of each special needs foster child whenever the Division of Family and Children determines the appropriate number of children to place in the special needs foster home. Reestablishes the Board for the Coordination of Child Care Regulation, which expired November 1, 1997, for a period beginning July 1, 1999, and ending July 1, 2001. Requires the Board for the Coordination of Child Care Regulation to study laws governing the regulation of child care and to make recommendations to the general assembly concerning changes in the law which the Board for the Coordination of Child Care Regulation finds appropriate.

Committee Questions and Discussion

Representative Budak presented PD 3199. Representative Budak noted that there are 5400 children in foster family homes in Indiana. Representative Budak discussed the importance of implementing statewide standards for the regulation of therapeutic and special needs foster care in Indiana.

Representative Dickinson expressed her support for reinstating the Board for the Coordination of Child Care Regulation. Representative Dickinson stated that as the result of recent laws requiring individuals who were previously on public assistance to work, there is a greater demand for child care. Representative Dickinson stated that the quality of child care in Indiana needs more oversight. Representative Dickinson related a situation in which children at an Indiana day care facility were allegedly given NyQuil to keep them quiet all day.

Representative Smith stated that he supports the need for a clarification of special needs and therapeutic foster care.

Vote on PD 3199, Do Pass: 8(yea) - 0(nea).

B. PD 3464² and PD 3292³ both deal with the dissolution of marriage waiting period.

PD 3464. Dissolution of marriage waiting period. Extends the minimum waiting period from 60 days to 120 days before a dissolution of marriage may be finalized. Retains 60 days as the minimum waiting period upon a showing of domestic violence against a party or the party's minor child.

PD 3292. Dissolution of marriage waiting period. Extends the minimum waiting period from 60 days to 180 days before a dissolution of marriage may be finalized.

Committee Questions and Discussion

Representative Budak authored and presented PD 3464 and Representative Kruse authored and presented PD 3292.

Chair Ford commented that few divorces are accomplished within sixty days. Chair Ford stated that most judges in his area require the parties to appear in court even if the dissolution of marriage is uncontested.

Senator Bowser questioned whether PD 3464 would be an invitation for domestic violence since a showing of domestic violence would enable the parties to divorce sooner.

Representative Budak stated that she polled her judges, and they said they would support an extension of the waiting period to 120 days. Representative Budak stated that the reason for extending the waiting period from 60 to 120 days is because there is a chance that during that extra period some couples would reconcile. Representative Budak stated that this would be especially important if children were involved.

Representative Smith stated that he did not believe that doubling or tripling the current waiting period before the parties would be allowed to divorce would effectively result in marriages being for life.

Representative Kruse believes the additional waiting period would lessen the divorce rate. Representative Kruse noted that Maryland has a two year waiting period before a couple may divorce and they have the lowest divorce rate in the country.

Representative Marendt commented that extending the waiting period is a way of making a statement about divorce; it is a statement discouraging divorce and shows

² This document is on file in the Legislative Information Center (see footnote 1).

³ This document is on file in the Legislative Information Center (see footnote 1).

that the state does not want to make it any easier for couples to get out of their marriages. Representative Marendt stated that making divorce more difficult is an important message.

In response to a question by Senator Lawson, Representative Budak stated that she serves on a board for a battered women's shelter in her community and they suggested making an exception to the waiting period for situations of domestic violence. Senator Lawson stated that she is concerned about situations of domestic violence especially as the result of situations she witnessed in the clerk's office.

Representative Smith remarked that the Committee's discussion gives the impression that people rush into divorce. Representative Smith stated that he does not believe this is the case but rather that divorce usually results from a history of problems.

Some Committee members commented that four months may give couples the opportunity to rethink their commitment to their marriages. However, several Committee members stated that they could not support PD 3292's extension of the waiting period to 180 days. Chair Ford did not call for a vote on PD 3292.

Chair Ford proceeded with a vote on PD 3464.

Vote on PD 3464, Do Pass: yea(9) - nea(0).

C. PD 3353⁴. Covenant marriage. Defines covenant marriage. Provides that couples can designate a covenant marriage when applying for a marriage license or after marriage. Requires a marriage license to indicate if the marriage is a covenant marriage. Establishes the procedure for declaring a covenant marriage. Requires the State Department of Health to maintain records of covenant marriage declarations. Provides limited grounds for legal separation or dissolution of a covenant marriage. Requires the State Department of Health to develop an informational pamphlet regarding covenant marriage.

Committee Questions and Discussion

Representative Kruse presented PD 3353.

Senator Bowser commented that if a person contracts for marriage there is an implication that it will go on forever. Led by Senator Bowser, the Committee discussed the fact that it is uncertain whether other states that do not have a covenant marriage law would give full faith and credit to a covenant marriage solemnized in Indiana. Several Committee members commented that courts have not addressed this issue.

Representative Marendt noted that a party's physical or sexual abuse of his or her spouse or a child of one of the spouses is grounds for divorce under a covenant

⁴ This document is on file in the Legislative Information Center (see footnote 1).

marriage. Representative Marendt suggested that PD 3353 be amended to allow grounds for divorce under covenant marriage to include physical or sexual abuse of any child and not be limited to abuse against a child of one of the spouses. Representative Marendt's amendment was taken by consent.

Representative Smith questioned why Indiana is getting into the marriage business by creating different levels of marriage contracts. Representative Smith stated that he theoretically, emotionally, and spiritually has a problem with covenant marriage. Representative Smith stated that he does not believe this level of intervention is warranted.

Senator Antich pointed out that covenant marriage merely gives individuals an option regarding the type of marriage they wish to have.

Representative Kruse commented that in his previous covenant marriage legislation only adultery was grounds for a divorce. Representative Kruse stated that expanding the legislation to include additional grounds for divorce appears to appeal to more people. Representative Kruse stated that it is important to consider that society is becoming less stable and that laws similar to PD 3353 have recently passed in two other states. Representative Kruse noted that concepts similar to those contained in PD 3353 were the law until 1973 before Indiana, like the rest of the country, adopted a no fault standard in its divorce laws. Representative Kruse further stated that problems in society are likely to be reduced if families remain intact. Representative Kruse said he spoke with a principal in his district who stated that 204 out of 206 disciplinary problems that he dealt with involved children who came from a nonintact families.

Representative Dickinson stated that the topic deserves wider discussion.

Vote on PD 3353, Do Pass as Amended: 7(yea) - 2 (nea).

D. PD 3411⁵. Premarital education. Establishes a waiting period of 60 days after a person applies for a marriage license before the person is allowed to marry. Provides an exception to the waiting period if the person petitions a court and the court finds good and sufficient reason and that it is in the best interests of all the individuals concerned with the petition to issue an order waiving the waiting period. Reduces the waiting period to three days if the person participates in a premarital education course as prescribed by statute. Requires that the premarital education course must consist of at least four hours of instruction. Requires the premarital education to include instruction on conflict management, communication skills, financial responsibilities, and parenting. Requires that the premarital education must be provided by certain qualified instructors. Requires the marriage license applicant to pay for the costs of the premarital education. Requires each qualified premarital education instructor to furnish each participant of the premarital instruction with a certificate of completion that the participant must file with the clerk of court. Requires each qualified instructor of

⁵ This document is on file in the Legislative Information Center (see footnote 1).

premarital education to file certain information regarding the instructor's qualifications with the clerk of court. Confers upon researchers from Indiana University-Bloomington, School of Social Work, the responsibility to determine the effectiveness of premarital education courses offered throughout Indiana. Allows Indiana University-Bloomington, School of Social Work, to create premarital education pilot programs. Increases from 60 to 120 days the period during which a marriage license application expires unless a license to marry is issued within that time.

Committee Questions and Discussion

Representative Kruse presented PD 3411.

Representative Smith stated that if PD 3411 passes he believes that more than just a survey of the effectiveness of the premarital education programs should be conducted. Representative Smith stated that he believes that ongoing monitoring of the premarital education programs would be needed.

Senator Bowser noted that PD 3411 does not make it mandatory for the clerks of court to distribute a roster of qualified instructors in the area who provide premarital education courses but rather leaves this function to the discretion of the clerks. Senator Bowser suggested that the draft should be amended to require the clerks to distribute this information. Senator Bowser was concerned that some clerks may only distribute a roster of instructors who are clergy members. Senator Bowser's amendment was adopted by consent.

Representative Smith expressed strong support for premarital counseling. Representative Smith stated that PD 3411 should require the government to pay for the premarital counseling if the parties are unable to afford it. Representative Marendt held an opposing view and suggested that a sentence should be added to PD 3411 to say that the costs of the premarital education course may not be borne by the state. Representative Marendt's amendment was adopted by consent.

Senator Bowser questioned whether there would be uniformity of the instructional material. Representative Kruse responded that PD 3411 lists topics that are to be covered in the premarital education courses.

Senator Bowser suggested including premarital education in the elementary and high school curriculums so that all levels of children would be involved with this issue. Senator Bowser questioned whether having the state get involved with premarital education could lead to regulating who is allowed to get married.

Representative Smith commented that he was unsure whether PD 3411 should require Indiana University-Bloomington to have the responsibility for reviewing the effectiveness of the premarital education courses. Representative Kruse noted that Indiana University-Bloomington has a prominent school of social work.

Vote on PD 3411: 6(yea) - 3(nea). (Note that PD 3411 did not pass. At least seven

affirmative votes, a majority of the appointed membership, is needed for the Committee to recommend a bill to the General Assembly.)

E. PD 3457⁶. Mandatory premarital blood testing. Requires an individual who intends to marry to have blood tests for certain sexually transmitted dangerous communicable diseases including human immunodeficiency virus (HIV) infection. Provides that the test results are confidential. (Current law provides for optional HIV testing before obtaining a marriage license.)

Committee Questions and Discussion

Representative Kruse presented PD 3457.

A question was raised as to why PD 3457 requires a specimen of the blood to be submitted to a laboratory that meets the standards established by the department of pathology of the Indiana University School of Medicine. Senator Ford responded that Indiana University School of Medicine establishes the standards of weights and measures in these types of matters.

Senator Lawson noted that it would be important to find out how long it takes to obtain the results of the blood tests.

Representative Marendt stated that PD 3457 seems like a lot of work. Representative Marendt stated that it does not seem consistent to require premarital blood testing for HIV but not for a serious communicable disease like HPV (Human Papillomavirus) which can lead to cervical cancer. Representative Marendt also noted that PD 3457 does not require testing for genital herpes.

Representative Kruse stated that he would consider adding to PD 3457 additional communicable diseases for which premarital blood testing would be required. (PD 3457 requires premarital blood testing only for the communicable diseases that are not curable.)

Vote on PD 3457, Do Pass: 7(yea) - 2(nea).

F. PD 3484⁷. Family mediation. Requires mediation of all contested matters involving disposition of property, child custody, visitation, and child support arising from dissolution of marriage cases. Requires the cases to be referred to the domestic relations counseling bureau or other mediation source. Provides that the mediation must be conducted in accordance with the Indiana Supreme Court Rules for Alternative Dispute Resolution. Prescribes duties to the mediator for conducting an investigation into the dispute and reporting to the court. Imposes a \$25 fee on certain

⁶ This document is on file in the Legislative Information Center (see footnote 1).

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redocketed domestic relations actions, and raises the marriage license fee by an additional \$7 to pay for the required family mediation. Repeals statutes that make mediation in the above-described circumstances discretionary with the court.

Committee Questions and Discussion

Representative Budak presented the bill. Representative Budak stated that PD 3484 is an effort to mitigate the vengeance and hatred of some couples who divorce.

Representative Marendt stated that she would be more amenable to raising the court fees for contempt petitions to pay for the family mediation.

Chair Ford stated that there has been a movement, primarily through court rules to increase mediation. Chair Ford stated that paying for the mediation can be a problem.

Several Committee members stated that mediation is the trend in the legal future. Several Committee members agreed that PD 3484 has possibilities but needs more work. The Committee also expressed an interest in reviewing a fiscal note on PD 3484 before making a decision. Therefore, Chair Ford held the vote on PD 3484.

III. Adjournment.

Chair Ford adjourned the meeting at 12:20 p.m.